



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

November 21, 2011

Rod Davis and Tami Shurtleff
2945 Trail Canyon Road
Soda Springs, ID 83276

RE: Notice of Change in Water Right Ownership for Water Right 11-995D

Dear Mr. Davis and Ms. Shurtleff:

In December 2008, you filed a Notice of Change in Water Right Ownership ("ownership change") for a water right from Formation Spring Creek. Because it can be difficult to determine ownership of water rights in the Bear River basin, many of the ownership changes in the area have been held. Just recently, we have begun to look at all of the pending ownership changes in the basin to determine whether any can be completed. This letter is meant to explain the ambiguity relating to the ownership of right 11-995D. It is also meant to provide you some suggestions on how you can successfully update the ownership of the water right in the future.

Water right 11-995 was decreed in 1919 as the result of a civil court case, *Lau v. Panting*. The decree stated that the original water right carried a May 1, 1895 priority date and authorized the diversion of 6.9 cfs for the irrigation of up to 248.9 acres. In 1942, the state reclamation engineer approved Transfer No. 643, which split off a portion of the water right (11-995B, 1.4 cfs, 20 acres). In 1956, the state reclamation engineer approved Transfer No. 874, which split off another portion of the water right. In Transfer 874, Heber Lau split off a 1.2 cfs portion of the right to irrigate property in the E1/2 of the NW1/4 and the W1/2 of the NE1/4 of Section 33, T08S, R42E (160 acres).

Transfer Approval 874 does not establish an irrigated acre limitation on right 11-995D. However, one must be implied. Mr. Lau could not have legally irrigated the full 160 acre place of use. To do so would have constituted an enlargement of the water right. In other words, Mr. Lau could not have irrigated more acres after the transfer than what were identified in the original decree. Before Transfer Approval 643, there were 5.5 cfs and 228.9 irrigated acres left under the water right. Mr. Lau split off 1.2 cfs of the 5.5 cfs (21.8% of the right). Therefore, the split portion of the water right would have been good for the irrigation of at most 49.9 acres (21.8% of the right). The department does not have any evidence showing where the 49.9 irrigated acres were located within the 160 acre permissible place of use set forth in Transfer Approval 874. At some point between 1956 and 1975, Claude S. Jeppsen purchased the 160-acre property.

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Included with your ownership change was a 2008 deed from Gerald Jeppsen to Rod Davis, covering a 24.3-acre parcel in the NENW and NWNE of Section 33. The deed specifically includes "Idaho Dept of Water Resources Water Right No. 11-995D." You have also provided a copy of the 1996 correction deed from Claude S. Jeppsen to Claude "Gerald" Jeppsen. The 1996 deed essentially covers the same 24.3 acre parcel.

We cannot complete the ownership change for 11-995D until we have additional information. Because it is unclear where the irrigated acres were located within the E1/2 of the NW1/4 and the W1/2 of the NE1/4, we need the chain of deeds for all transactions occurring on this property from Claude S. Jeppsen to the present day. This will allow us to confirm that the water wasn't included in a separate (prior) sale to other property owners in the area.

Another way you could complete the ownership change, without collecting any other deeds, would be to have the other property owners within the 160-acre tract, sign a notarized declaration that they have no interest in water right 11-995D. Caribou County taxlot records show the other owners within the 160-acre tract are Douglas and Diane Ainscough and M. Wells Properties LLC.

Once you have provided sufficient evidence of ownership of the water right, we can complete the ownership change. You will then be able to consolidate the entire right onto your 24.3 acre property. At this stage, I have decided to return your ownership change and filing fee (\$50). A refund check from the state of Idaho should arrive in the next couple of weeks. This will allow you time to track down the additional information described above. Feel free to re-file your ownership change with the appropriate filing fee once the additional evidence is obtained. Please contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Cefalo", written over the printed name.

James Cefalo

Water Resources Program Manager
208-525-7161